

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Non-Resident
Insurance Producer License of
Johanna Kay Thornley,
License No. 40061399

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was scheduled for a prehearing conference before Administrative Law Judge Beverly Jones Heydinger (ALJ) on June 30, 2011, at 1:30 p.m. The prehearing conference was held pursuant to a Notice and Order Prehearing Conference, dated May 6, 2011.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Johanna Kay Thornle, Respondent, did not appear in person or by counsel. The ALJ has received no Notice of Appearance, Request for Continuance, or other communication from the Respondent.

STATEMENT OF ISSUES

1. Did the Respondent forge or cause to be forged another's name on two Attending Provider's Statement (APS) forms, and otherwise use fraudulent, coercive, or dishonest practices, or demonstrate incompetence, untrustworthiness or financial irresponsibility, in violation of Minn. Stat. §§ 45.027, subd. 7 (a)((4), and 60K.43, subd. 1 (8) and (10), and Minn. R. 2795.1000?¹
2. Did Respondent fail to report to the Commissioner within 30 days that her Kansas non-resident insurance agent license was revoked for committing unfair insurance practices or fraud, in violation of Minn. Stat. §§ 60K.43, subd. 1 (2), (7) and (9), and 60K.54, subd. 1?
3. Is discipline against the Respondent in the public interest?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

¹ Minnesota Statutes are cited to the 2010 Edition; Minnesota Rules are cited to the 2009 Edition.

FINDINGS OF FACT

1. On May 6, 2011, a copy of the Notice and Order for Prehearing Conference was sent by first class mail to Johanna Kay Thornley, as appears from an Affidavit of Service by First Class Mail, on file herein. The Notice was not returned by the Post Office.

2. On May 11, 2011, the ALJ sent the Respondent a letter with information about the Prehearing Conference, including the date, time and location. The letter was not returned by the Post Office.

3. The Respondent did not appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

4. The Notice and Order for Prehearing Conference contained the following informational warning:

Respondent's failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondent may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.

5. Because Respondent failed to appear, she is in default.

6. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 45.024, 45.027, subd. 1, and 14.50.

2. Respondent received due, proper and timely notice of the charges against her, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice and Order for Prehearing Conference or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Respondent forged or caused to be forged another's name on two Attending Provider's Statement (APS) forms, and otherwise used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility, in violation of Minn. Stat. §§ 45.027, subd. 7 (a)((4), and 60K.43, subd. 1 (8) and (10), and Minn. R. 2795.1000.

7. Respondent failed to report to the Commissioner within 30 days that her Kansas non-resident insurance agent license was revoked for committing unfair insurance practices or fraud, in violation of Minn. Stat. §§ 60K.43, subd. 1 (2), (7) and (9), and 60K.54, subd. 1.

8. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Commerce take adverse action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated: August 4, 2011

Richard C. Luis for

BEVERLY JONES HEYDINGER
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attention: Melissa Knoepfler, Suite 500, 85 Seventh Pl E, St. Paul, MN 55101

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 calendar days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

BJH